

House Bill 327 (AS PASSED HOUSE AND SENATE)

By: Representatives Coan of the 101st, Fleming of the 117th, Carter of the 159th, Williams of the 4th, Teilhet of the 40th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 33-9-40.2 of the Official Code of Georgia Annotated, relating to
2 workers' compensation insurance premium discount for insured with drug-free workplace
3 program, so as to remove the existing eight-year limitation on the application of the discount;
4 to amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to
5 workers' compensation, so as to authorize the State Board of Workers' Compensation to
6 issue rules relating to the electronic submission and transmission of documents; to provide
7 for schedule of hearings relating to determination of noncatastrophic injury status; to change
8 a provision relating to the designation process for a catastrophic injury by creating a
9 rebuttable presumption; to change the compensation for temporary total disability; to change
10 the compensation for temporary partial disability; to provide for related matters; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Code Section 33-9-40.2 of the Official Code of Georgia Annotated, relating to workers'
15 compensation insurance premium discount for insured with drug-free workplace program,
16 is amended by striking subsection (b) and inserting in lieu thereof a new subsection (b) to
17 read as follows:

18 "(b)(1) The premium discount provided by this Code section shall be applied to an
19 insured's policy of workers' compensation insurance pro rata as of the date the insured
20 receives certification by the State Board of Workers' Compensation and shall continue
21 for a period not to exceed eight years as long as the insured maintains the certification as
22 having a drug-free workplace; provided, however, an insurer shall not be required to
23 credit the actual amount of the premium discount to the account of the insured until the
24 final premium audit under such policy. Certification by an insured shall be required for
25 each of the eight years year in which such premium discount is granted. ~~Thereafter, any~~
26 ~~premium discount pursuant to this article shall be determined from the insured's~~

1 ~~experience rating plan or in the case of an insured not rated upon experience, as provided~~
2 ~~in paragraph (2) of this subsection.~~

3 ~~(2) With respect to an insured which is not rated upon experience, any premium discount~~
4 ~~given an insured pursuant to this article after the initial eight-year period provided in~~
5 ~~paragraph (1) of this subsection shall be determined by the Commissioner based upon~~
6 ~~data received from the rating and statistical organization designated by the Commissioner~~
7 ~~pursuant to this chapter."~~

8 **SECTION 2.**

9 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
10 compensation, is amended by striking Code Section 34-9-40, relating to creation of the State
11 Board of Workers' Compensation, and inserting in lieu thereof a new Code Section 34-9-40
12 to read as follows:

13 "34-9-40.

14 There is created and established within the executive branch a board to be known as the
15 State Board of Workers' Compensation, composed of three members who shall be
16 appointed by the Governor for a term of four years. Each member shall hold office until his
17 or her successor shall have been appointed and qualified. An individual chosen to fill a
18 vacancy shall be appointed only for the unexpired term of the member whom he or she
19 shall succeed. The board shall have full authority, power, and the duty to promulgate
20 policies, rules, and regulations for the administration of this chapter. The board may
21 promulgate policies, rules, and regulations concerning the electronic submission to and
22 transmission from the board of documents and filings. Additionally, the board shall have
23 full authority to conduct training seminars for the purpose of educating various employers
24 as to their liability regarding workers' compensation claims. Such seminars may be paid
25 for by the board through funding provided from sources other than appropriations made by
26 the General Assembly. Excess funds generated through seminars may be amended into the
27 board's operating budget as approved by the Office of Planning and Budget. Excess funds
28 generated through seminars not amended into the board's operating budget, as determined
29 by the state auditor, shall lapse to the Office of Treasury and Fiscal Services."

30 **SECTION 3.**

31 Said chapter is further amended by striking Code Section 34-9-60, relating to the rule-making
32 and subpoena powers of the State Board of Workers' Compensation, and inserting in lieu
33 thereof a new Code Section 34-9-60 to read as follows:

1 "34-9-60.

2 (a) The board may make rules, not inconsistent with this chapter, for carrying out this
3 chapter. Processes and procedure under this chapter shall be as summary and simple as
4 reasonably possible; provided, however, that, in any proceeding under this chapter where
5 the parties are represented by counsel, the board may require, by rule or regulation, on
6 forms provided by the board, the filing of statements of contentions and points of
7 agreement. The board may promulgate policies, rules, and regulations concerning the
8 electronic submission to and transmission from the board of documents and filings. The
9 board, any member of the board, or any administrative law judge shall have the power for
10 the purposes of this chapter to issue and enforce subpoenas, to administer or cause to have
11 administered oaths, and to examine or cause to be examined such parts of the books and
12 records of the parties to a proceeding as relate to questions in dispute. Article 2 of Chapter
13 10 of Title 24 shall govern the issuance and enforcement of subpoenas pursuant to this
14 Code section, except that the board, any member of the board, or any administrative law
15 judge shall carry out the functions of the court and the executive director shall carry out the
16 functions of the clerk of the court. The board shall not, however, have the power to order
17 imprisonment as a means of enforcing a subpoena. The board shall have the power to issue
18 writs of fieri facias in order to collect fines imposed pursuant to this Code section and such
19 writs may be enforced in the same manner as a similar writ issued by a superior court.
20 (b) In addition to the enforcement procedures provided in subsection (a) of this Code
21 section, the superior court of the county in which the hearing is held shall, on application
22 of the board, any member of the board, or an administrative law judge, enforce by proper
23 proceedings the attendance and testimony of witnesses and the production and examination
24 of books, papers, and records."

25 SECTION 4.

26 Said chapter is further amended by striking subsection (a) of Code Section 34-9-102, relating
27 to a hearing before an administrative law judge, and inserting in lieu thereof a new subsection
28 (a) to read as follows:

29 "(a) *Notice of hearing.* The hearing shall be held as soon as practicable; provided, however,
30 no hearing shall be scheduled less than 30 days nor more than 90 days from the date of the
31 hearing notice. With regard to any request for a determination of noncatastrophic status in
32 accordance with subparagraph (g)(6)(B) of Code Section 34-9-200.1, no hearing shall be
33 scheduled less than 90 days after the hearing is requested."

SECTION 5.

Said chapter is further amended by striking subsection (g) of Code Section 34-9-200.1, relating to rehabilitation benefits, and inserting in lieu thereof a new subsection (g) to read as follows:

"(g) 'Catastrophic injury' means any injury which is one of the following:

- (1) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- (2) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;
- (3) Severe brain or closed head injury as evidenced by:
 - (A) Severe sensory or motor disturbances;
 - (B) Severe communication disturbances;
 - (C) Severe complex integrated disturbances of cerebral function;
 - (D) Severe disturbances of consciousness;
 - (E) Severe episodic neurological disorders; or
 - (F) Other conditions at least as severe in nature as any condition provided in subparagraphs (A) through (E) of this paragraph;
- (4) Second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face or hands;
- (5) Total or industrial blindness; or
- (6)(A) Any other injury of a nature and severity that prevents the employee from being able to perform his or her prior work and any work available in substantial numbers within the national economy for which such employee is otherwise qualified; provided, however, if the injury has not already been accepted as a catastrophic injury by the employer and the authorized treating physician has released the employee to return to work with restrictions, there shall be a rebuttable presumption, during a period not to exceed 130 weeks from the date of injury, that the injury is not a catastrophic injury. During such period, in determining whether an injury is catastrophic, the board shall give consideration to all relevant factors including, but not limited to, the number of hours for which an employee has been released. A decision granting or denying disability income benefits under Title II or supplemental security income benefits under Title XVI of the Social Security Act shall be admissible in evidence and the board shall give the evidence the consideration and deference due under the circumstances regarding the issue of whether the injury is a catastrophic injury; provided, however, that no presumption shall be created by any decision granting or denying disability income benefits under Title II or ~~supplementary~~ supplemental security income benefits under Title XVI of the Social Security Act.

1 (B) Once an employee who is designated as having a catastrophic injury under this
2 subsection has reached the age of eligibility for retirement benefits as defined in 42
3 U.S.C. Section 416(l), as amended March 2, 2004, there shall arise a rebuttable
4 presumption that the injury is no longer a catastrophic injury; provided, however, that
5 this presumption shall not arise upon reaching early retirement age as defined in 42
6 U.S.C. Section 416(l), as amended March 2, 2004. When using this presumption, a
7 determination that the injury is no longer catastrophic can only be made by the board
8 after it has conducted an evidentiary hearing.

9 The rehabilitation supplier appointed to a catastrophic injury case shall have the expertise
10 which, in the judgment of the board, is necessary to provide rehabilitation services in such
11 case."

12 **SECTION 6.**

13 Said chapter is further amended in Code Section 34-9-200.1, relating to rehabilitation
14 benefits, by inserting at the end thereof a new subsection (i) to read as follows:

15 "(i) Subsequent to either an employer's designating an employee's injury as catastrophic
16 or a board determination as to the catastrophic or noncatastrophic nature of an employee's
17 injury, either party may request a new determination, based on reasonable grounds, as to
18 the catastrophic or noncatastrophic nature of the employee's injury."

19 **SECTION 7.**

20 Said chapter is further amended by striking Code Section 34-9-261, relating to compensation
21 for total disability, and inserting in lieu thereof a new Code Section 34-9-261 to read as
22 follows:

23 "34-9-261.

24 While the disability to work resulting from an injury is temporarily total, the employer shall
25 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
26 employee's average weekly wage but not more than ~~\$425.00~~ \$450.00 per week nor less
27 than ~~\$42.50~~ \$45.00 per week, except that when the weekly wage is below ~~\$42.50~~ \$45.00
28 the employer shall pay a weekly benefit equal to the average weekly wage. The weekly
29 benefit under this Code section shall be payable for a maximum period of 400 weeks from
30 the date of injury; provided, however, in the event of a catastrophic injury as defined in
31 subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall
32 be paid until such time as the employee undergoes a change in condition for the better as
33 provided in paragraph (1) of subsection (a) of Code Section 34-9-104."

SECTION 8.

Said chapter is further amended by striking Code Section 34-9-262, relating to compensation for temporary partial disability, and inserting in lieu thereof a new Code Section 34-9-262 to read as follows:

"34-9-262.

Except as otherwise provided in Code Section 34-9-263, where the disability to work resulting from the injury is partial in character but temporary in quality, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the difference between the average weekly wage before the injury and the average weekly wage the employee is able to earn thereafter, but not more than ~~\$284.00~~ \$300.00 per week for a period not exceeding 350 weeks from the date of injury."

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.